

ATTACHMENT B

**November 23, 2015 Letter
IRGI to Tracie White and Curtis Stovall
COLORADO DEPARTMENT OF PUBLIC
HEALTH AND ENVIRONMENT**

**CONSENT AGREEMENT SIGNED BY IRGI,
JULY 29, 2015 (“CA”)**

THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
STATE OF COLORADO

CONSENT AGREEMENT

Number:

IN THE MATTER OF IRG REDEVELOPMENT I, LLC

1. This Consent Agreement ("Consent Agreement") is issued and entered into by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "Department") pursuant to the Department's authority under the Colorado Hazardous Waste Act ("the Act"), sections 25-15-301 to 327, C.R.S., and Part 100, Section 100.10(d) of the Colorado Hazardous Waste Regulations ("the Regulations"), 6 CCR 1007-3, with IRG Redevelopment I, LLC ("IRGI").

STATEMENT OF PURPOSE

2. The purpose of this Consent Agreement is to establish the regulatory framework between the Department and IRGI related to: (1) the performance of limited initial pre-development activities on property owned by IRGI known as Lowry Vista, in which a portion overlies the former Lowry Air Force Base landfill known as Operable Unit 2 or OU2; (2) the additional post closure care obligations required from IRGI under the Regulations based on the closure status of OU2; IRGI and (3) to ensure that such limited pre-development activities are protective of human health and the environment.

SCOPE OF THIS CONSENT AGREEMENT

3. Lowry Assumption, LLC (LAC) is currently performing the post closure care requirements for OU2, pursuant to Consent Agreement 01-08-07-02 between the Department and LAC dated August 7, 2002 (the "2002 Consent Agreement"), the Regulations and the *Post-Closure Operations and Maintenance Plan (Appendix E)* and the *Post-Closure Monitoring Plan (Appendix G)* of the *Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry*, dated November 5, 2003 (the "Post Closure Plan").

4. IRGI is not a party to the 2002 Consent Agreement or the Post Closure Plan. Remediation and post closure of OU2 is conducted by LAC and financed by the United States Air Force ("USAF") in accordance with the Cooperative Agreement for

Environmental Services between USAF, Lowry Economic Redevelopment Authority, and Lowry Assumption, LLC (the "Cooperative Agreement"). The Post Closure Plan and Cooperative Agreement do not contemplate the limited initial pre-development activities proposed by IRGI.

5. On December 10, 2013, IRGI submitted a *Revised Cap Penetration Plan for Subsurface Soil Borings* ("CPP") to the Department for review and approval. The CPP proposes to penetrate the current OU2 cap to collect geotechnical, soils, groundwater, and soil gas data related to IRGI's anticipated redevelopment of the site. The Department approved the CPP with conditions on December 23, 2013..

6. On September 28, 2012, IRGI submitted a *Request to Stockpile Soil on OU2 Landfill Cap* ("SSP") to the Department for review and approval. This request was revised on November 12, 2012. On December 2, 2013, IRGI submitted a *Stockpile Financial Assurance Cost Estimate and Stockpile Removal Timeframe Extension*. The SSP proposes to stockpile soil on the landfill cover for IRGI's anticipated redevelopment of the site. The Department approved the SSP with conditions on December 31, 2013.

7. On December 6, 2013, IRGI submitted to the Department a *Field Investigation Work Plan* for OU2 and on December 19, 2013, IRGI submitted a *Field Investigation Work Plan Financial Assurance Cost Estimate for OU2* ("FIWP"). The FIWP outlines a scope of subsurface boring investigations on OU2 to support IRGI's redevelopment of the site. The Department approved the FIWP with conditions on December 31, 2013.

8. The CPP, SSP, SSP Assurances and the FIWP comprise all of the limited pre-development activities contemplated by this Consent Agreement. These limited pre-development activities proposed by IRGI may have an impact on OU2 in relation to the integrity of the landfill cap; the effectiveness of drainage and erosion controls; slope stability and groundwater control systems.

9. This Consent Agreement intends for IRGI to assume the additional post closure obligations, which are directly related to IRGI's limited pre-development activities.

FINANCIAL RESPONSIBILITY

10. IRGI shall provide financial assurance in accordance with the Colorado Hazardous Waste Regulations ("the Regulations"), 6 CCR 1007-3, Part 266, related to its activities associated with its CPP, as approved by the Department. The mechanism for IRGI's financial assurance must be approved by the Department prior to commencement of any pre-development activities. The amount of financial assurance required will be the amount necessary to: (1) restore OU2 to its current closure condition, as set forth in the Phase 2 Corrective Action Plan, (2) cover the costs to repair and restore OU2 in response to the activities performed under the CPP, (3) cover the costs to repair and restore OU2 in

response to the activities performed under the CPP, and (4) include costs that will be incurred by the Department for regulatory oversight to repair and restore OU2.

11. IRGI shall comply with the requirements of Section 266.13, regarding the cost estimate for activities associated with the CPP, SSP and FIWP required by this Consent Agreement.

12. IRGI shall provide and maintain liability coverage pursuant to Part 266.16 for claims arising from activities conducted pursuant to this Consent Agreement. IRGI shall provide liability coverage for sudden and non-sudden occurrences arising from activities conducted pursuant to this Consent Agreement.

13. IRGI shall comply with the requirements of Section 266.17, regarding the incapacity of IRGI, guarantors, or financial institutions issuing financial instruments required by this Consent Agreement.

DISPUTE RESOLUTION

14. It is the intention of the parties that all disputes are resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All timeframes for resolving disputes below may be lengthened by mutual consent.

15. Should the parties be unable to agree regarding any matter subject to this Consent Agreement, either party may submit a notice of dispute in writing as soon as practicable, but in no event to exceed ten (10) days of the failure to agree, to the designated representative of IRGI and the Hazardous Materials and Waste Management Remediation & Restoration Program Manager.

16. Should the designated representatives of IRGI and the Hazardous Materials and Waste Management Division Remediation & Restoration Program Manager be unable to agree within ten (10) days of the other Party's receipt of the Notice of Dispute, the matter shall be elevated to the designated representatives of IRGI and the Division Director, Hazardous Materials and Waste Management Division, Colorado Department of Public Health and Environment. If agreement cannot be reached within twenty (20) days, the Department shall confirm or modify its decision within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act.

NOTICES

17. Whenever any person gives or serves any Notice under this Consent Agreement (the term "Notice" as used herein includes any demand or other communication with respect to this Consent Agreement), each such Notice shall be in writing and shall be

deemed effective: (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (ii) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested, or (iii) when delivered, if an electronic transmission is sent in accordance with the Colorado Electronic Transactions Act:

To IRGI: IRGI Redevelopment I, LLC
8044 Montgomery Road, Suite 710
Cincinnati, OH 45236
Attention: Peter M. Goffstein, Senior Vice President

To the Department: Curt Stovall and Tracie White
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, B2
Denver, Colorado 80246-1530

Any party may change its address or the individual to whose attention a Notice is to be sent hereunder by giving written notice to the other party in compliance with the provisions of this Section.

REIMBURSEMENT OF COSTS

18. Reimbursement of all state services shall be through and in accordance with the Colorado Solid Waste Regulations, 6 CCR 1007-2.

MODIFICATIONS

19. The parties may modify this Consent Agreement by written amendment duly signed and authorized by both parties.

SUCCESSORS AND ASSIGNS

20. This Consent Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

COMPLETION OF ACTIVITIES

21. IRGI shall submit a Notice of Completion to the Department upon completion of the CPP and SPP activities subject to this Consent Agreement.

TERMINATION

22. The parties may terminate this Consent Agreement upon one of the following:
- (a) Completion of the activities contemplated by this Consent Agreement and restoration of OU2 as required by the Department;
 - (b) The Department and IRGI entering into a subsequent agreement; or
 - (c) Mutual agreement of the parties.

[Signature Pages follow]

**CONSENT AGREEMENT
IN THE MATTER OF IRG REDEVELOPMENT I, LLC**

AUTHORIZATION TO SIGN

23. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Agreement. This Consent Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Agreement.

FOR THE DEPARTMENT:

Curt Stovall

(Title)

Date

Tracie White

(Title)


Date

**CONSENT AGREEMENT
IN THE MATTER OF IRG REDEVELOPMENT I, LLC**

AUTHORIZATION TO SIGN

24. The undersigned warrants that he is authorized to legally bind his respective principals to this Consent Agreement. This Consent Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Agreement.

FOR IRGI:



Peter Goffstein
Senior Vice President

7/29/15

Date